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Part V

# Department of Agriculture

## Animal and Plant Health Inspection Service

**7 CFR Parts 319 and 354**

**Solid Wood Packing Material From China; Interim Rule**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Parts 319 and 354**

**[Docket No. 98–087–1]**

**RIN 0579–AB01**

## Solid Wood Packing Material From China

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations for importing logs, lumber, and other unmanufactured wood articles by adding treatment and documentation requirements for solid wood packing material imported from China. This change means that wooden pallets, crating, dunnage, and other wooden packing material imported into the United States from China will have to be heat treated, fumigated, or treated with preservatives prior to departure from China. This action will affect anyone who uses solid wood packing material in connection with exporting commodities from China to the United States. This action is necessary to control the risk that solid wood packing material from China could introduce dangerous plant pests, including forest pests, into the United States, a risk demonstrated by many recent incidents where exotic pests were detected in solid wood packing material from China.

**DATES:** Interim rule effective December 17, 1998. Consideration will be given only to comments received on or before November 17, 1998. We also will consider comments made at three public hearings scheduled to be held during the public comment period in Washington, DC, on October 16, 1998, and in Seattle, WA, and Los Angeles, CA, on dates to be announced.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 98–087–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit, 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–087–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

The Washington, DC, public hearing will be held on October 16, 1998, at the Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

**SUPPLEMENTARY INFORMATION:**

### Background

Logs, lumber, and other unmanufactured wood articles imported into the United States could pose a significant hazard of introducing plant pests detrimental to agriculture and to natural, cultivated, and urban forest resources. The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles.

One of the classes of wood articles that is subject to import restrictions is solid wood packing material (SWPM). The regulations define SWPM in § 319.40–1 as ''Wood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.'' Most of the wooden pallets, crates, dunnage and similar articles used to assist the movement of commodities in international commerce meet the definition of SWPM and are subject to the regulations. However, it is important to note that more and more synthetic or highly processed wood materials are being used as packing material, and these articles (e.g., plywood, oriented strand board, corrugated paperboard, plastic, resin composites) are not subject to the requirements for SWPM.

The importation of SWPM is regulated because this material presents a number of plant pest risks. SWPM is often constructed from raw wood just shortly before it is used, often includes bark on some surfaces, and is often made from low quality wood that sometimes may be of low quality due to pest damage. These factors all mean that SWPM presents a high risk of spreading wood pests that exist in the areas where the SWPM was constructed. Additionally, the SWPM in transit is in close contact with the commodities (including wood products) it is used to pack, with an excellent opportunity for pests to move from SWPM to commodities. After commodities arrive in the United States, pests from the SWPM have many opportunities to escape and become established, especially since the SWPM associated with commodities often moves long distances throughout the United States, is reused frequently, and is often stored outdoors at ports and warehouses when not in use.

To control these risks, § 319.40–3 of the regulations imposes certain requirements on imported SWPM. If the SWPM is not free of bark, it must be heat treated, fumigated, or treated with preservatives in accordance with the regulations prior to arrival. Even if the SWPM is free of bark, the SWPM must be heat treated, fumigated, or treated with preservatives in accordance with the regulations prior to arrival if it is used to pack regulated wood commodities in transit. However, SWPM used to move regulated wood commodities need not be heat treated, fumigated, or treated with preservatives if the SWPM meets all the importation and entry conditions required for the regulated wood commodities the SWPM is used to move.

The least restrictive requirement for importing SWPM occurs when the SWPM is used to move nonregulated articles (articles that are not wood, or that are highly processed wood excluded from regulation). When SWPM is used to move nonregulated articles, the SWPM must be totally free from bark and apparently free from live plant pests. It need not be heat treated, fumigated, or treated with preservatives.

The Animal and Plant Health Inspection Service (APHIS) inspects and monitors shipments of imported wood at the port of first arrival to ensure that articles are imported in compliance with the regulations. Inspectors have documented instances where imported SWPM was not in compliance with the regulations. The single largest source of SWPM not in compliance with the regulations has been commercial shipments from China. (China means the People's Republic of China, including the Hong Kong Special Administrative Region.) During the period from August 23, 1995 (when the regulations went into effect), until March 15, 1998, inspectors reported 132 shipments containing SWPM from China that were infested with exotic plant pests. In each of these reported instances, the shipment was treated, reexported, or destroyed. There were also many additional reports of pallets, crating and other SWPM that had bark

on the surface and thus were not in compliance with the regulations.

These reports indicate that a very large problem exists with SWPM imported from China. APHIS inspects a percentage of shipments arriving from China if the shipments are not regulated wood products. However, virtually all of these shipments have SWPM as packing materials. Some of the cargo in which APHIS has found exotic plant pests in the accompanying SWPM include cable wire, granite, marble tiles, pipe flanges, machinery, and tools.

APHIS has recently found numerous exotic plant pests associated with SWPM imported from China, including extremely destructive wood-boring insects of the genera *Anoplophora, Ceresium, Hesperophanes,* and *Monochamus*. Pests of these genera have moved with the SWPM that carries them to numerous States, including California, Florida, Illinois, Indiana, Michigan, New Jersey, New York, North Carolina, Tennessee, Texas, Washington, and Wisconsin. By the end of fiscal year 1998, approximately $5 million will have been spent in ongoing efforts to eradicate these outbreaks in the States of New York and Illinois. In each of the other States listed, the pests were intercepted and destroyed before becoming established.

An infestation of one particularly destructive exotic pest of maple, poplar, and other hardwood trees, the Asian longhorned beetle (*Anoplophora glabripennis),* was discovered near a maritime facility in Brooklyn, NY, in August 1996. State and Federal authorities have since uprooted, chipped, and burned thousands of trees on public and private land to control the infestation. An outbreak of the same pest was reported in Ravenswood, IL, and surrounding areas in July 1998. Control efforts in both areas continue. Even though the Asian longhorned beetle was likely established in these areas prior to implementation of our current regulations governing SWPM, the Asian longhorned beetle continues to be intercepted on shipments associated with SWPM from China.

The damage and losses that would occur if additional plant pests associated with SWPM from China should become established and spread in the United States would be substantial. For example, many species of hardwood trees would be destroyed, severely harming industries that depend on the wood and other products of these trees (e.g., maple syrup, maple sugar, fruit). Hardwood lumber industries would face critical supply shortages and would be forced to try to meet their needs with imported hardwoods. Mature ornamental trees would be attacked, and domestic supplies of trees for nursery and landscaping companies would be reduced or eliminated. Widespread destruction of hardwood trees in public and private forest land would occur, causing enormous direct losses in tourism and related industries and enormous losses that cannot be easily measured to the aesthetics of our woodlands.

APHIS, Plant Protection and Quarantine, recently completed a plant pest risk assessment that focuses on four taxa intercepted on SWPM from China. The assessment provides scientific references and details on the biology of *Ceresium* spp., *Monochamus* spp., *Hesperophanes* spp., and the Asian longhorned beetle (*Anoplophora glabripennis*), as well as qualitative characterizations of the biological consequences and likelihood of introduction. The assessment is consistent with guidelines for conducting plant pest risk analyses provided by the International Plant Protection Convention (IPPC) of the United Nations Food and Agriculture Organization (FAO) and the North American Plant Protection Organization (NAPPO). The assessment concluded that each of these taxa constitutes a significant and immediate threat to the United States. In addition, APHIS has conducted an environmental assessment of the impacts of the interim rule. Copies of both of these documents are available from the office identified above under **FOR FURTHER INFORMATION CONTACT.**

The United States Department of Agriculture has tried to convince the national government of China and individual exporters of Chinese goods to take steps to control the problems caused by exotic plant pests in SWPM from China. The compliance of Chinese shipments with the current regulatory requirements for SWPM continues to be very poor, with many shipments arriving with bark and obvious signs of live pests on SWPM.

To control this serious problem, APHIS is initiating additional treatment and certification requirements for SWPM from China. These imports represent the largest identifiable source of the introductions discussed above. Additionally, APHIS will continue to evaluate the problem of SWPM imports in general. We are currently preparing an advance notice of proposed rulemaking to seek information and develop regulatory options on the general problem of imported SWPM from all countries and the particular problem of how to respond to the scheduled discontinued use, both domestically and overseas, of methyl bromide fumigation for imported wood products, in accordance with the Clean Air Act's and Montreal Protocol's phase-out schedules. Because there are multiple risks to U.S. resources from exotic wood-boring insects associated with SWPM of other origins, and because of the potential for adverse environmental effects from the use of methyl bromide and other pesticides as a result of this rule, APHIS considers this interim rule to be the first step towards better exclusion of pest risks from SWPM. APHIS will initiate an interagency review in order to develop an advance notice of proposed rulemaking that will identify various options for amending existing regulations for importing SWPM from all foreign countries to further improve exclusion procedures and protect forest resources, while at the same time minimizing the further use of methyl bromide in order to protect the stratospheric ozone layer. APHIS intends to implement this interim rule until APHIS has completed the rulemaking process described above for improved measures for mitigating the pest risk of SWPM from all sources. During the period this interim rule is in effect, APHIS will work with China to obtain information on actions China has taken to comply with the interim rule, including the use of methyl bromide and other pesticides. If the amount of methyl bromide used in China is greater than expected, or if the interim rule remains in effect longer than 2 years, additional environmental analysis may be necessary. We will consider comments received on the advance notice of proposed rulemaking, as well as on this interim rule, in developing any proposed or final rule changing the requirements for importing SWPM.

**Hong Kong Special Administrative Region**

This interim rule is intended to address the problem of serious plant pests, such as Asian longhorned beetle, being introduced into the United States on SWPM imported from the mainland of China. Due to the close and unique economic connections between the Hong Kong Special Administrative Region and the mainland of China, and the fact that about half of the mainland's exports to the United States come through Hong Kong, it is necessary to include the Hong Kong Special Administrative Region in this interim rule in some form to effectively address the problem. This interim rule is intended to require certification of all SWPM originating on the mainland of China as having been treated. In view of

the separate customs territory status and separate quarantine and inspection regime maintained by the Hong Kong Special Administrative Region with regard to the mainland of China, and in view of the fact that a large amount of goods not originating on the mainland of China or in the Hong Kong Special Administrative Region pass through the Hong Kong Special Administrative Region on the way to the United States, we are considering changes to the interim rule in order to avoid unnecessary effect on Hong Kong's trade with the United States and other parts of the world while preventing further introductions of serious plant pests from Hong Kong or the mainland of China.

**New Regulatory Requirements for SWPM From China**

We are amending the regulations to require that SWPM imported into the United States from China be heat treated, fumigated, or treated with preservatives prior to departure from China. We will also require that each shipment from China that contains SWPM must be accompanied by a certificate, issued by the national government of China, stating that the SWPM was heat treated, fumigated, or treated with preservatives prior to departure from China. Shipments from China that do not employ SWPM must be accompanied by an exporter statement stating that the shipment contains no SWPM. An exporter statement is not a government-issued document but rather is a written declaration by the exporter, such as an exporter statement on or attached to the commercial invoice, and as an attachment to the bill of lading, stating the nature of the shipment and that it does not contain any SWPM. A definition of exporter statement is added to the definitions in § 319.40–1.

Because the certificate requirement may slow clearance of shipments at U.S. ports while inspectors match certificates with the associated SWPM, we are also providing exporters of SWPM from China with the option of having each article of SWPM that has been treated, marked at the treatment facility with a stamp or weatherproof label that reads ''CHINA TREATED.'' This marking, while not required, may help to expedite release of shipments at the port of first arrival. This type of marking, however, is not a substitute for the required certificate.

Heat treatment, fumigation, or treatment with preservatives may be performed in accordance with the treatment schedules authorized for SWPM in the regulations or in the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1 of this chapter. It is anticipated that most treatments conducted to meet the regulatory requirements will employ methyl bromide fumigation, although some other fumigants such as phosphene, or a number of preservatives, may be employed. Preservatives in common use include arsenic, copper sulfate, creosote, and copper-8-quinolinate.

We are not establishing a time limit for treatment of SWPM; i.e., SWPM will not be required to be treated within a certain number of days prior to embarking for the United States. Such a requirement would make it far more difficult for exporters to schedule treatment of SWPM and conduct treatments in large, cost-effective batches. A time limit on treatment of SWPM would likely encourage a higher level of noncompliance by exporters, which would result in an increased risk level. However, to guard against reinfestation during the entire interval between treatment and export, the SWPM must be stored, handled, or safeguarded in a manner which excludes any infestation of it by plant pests.

If a shipment containing SWPM from China arrives at a port in the United States and the SWPM is found to contain plant pests, or the SWPM has not been heat treated, fumigated, or treated with preservatives, or there is no accompanying certificate documenting such treatment, an APHIS inspector may deny entry to the entire lot or shipment (cargo and SWPM). Alternatively, the inspector will allow the importer to separate the cargo from the SWPM, at a location and within a time period specified by the inspector, and destroy or reexport the SWPM, if the inspector determines that this can be done without risk of spreading plant pests. This may only be done in cases where there is a secure facility for separation of the cargo, available means to destroy the SWPM (incineration, or chipping and incineration, are the authorized methods), and available APHIS inspectors to supervise the process. The importer will be responsible for all expenses associated with this process.

**Alternatives Considered**

APHIS considered several alternatives in an effort to achieve the necessary control over the pest problems associated with SWPM from China while imposing the minimum necessary adverse impacts on persons who will be affected by this rule. We attempted to set requirements that allowed exporters and importers to mitigate the risks associated with SWPM from China in a variety of ways—by using alternative non-regulated packing material, or by using one of several treatment options for the packing material, or by purchasing pre-treated packing material that is available from many sources—that would allow them to make sound business decisions on the best way their particular enterprise could comply with our regulatory requirements.

The major alternatives we considered for this rule were: (1) Prohibiting the entry of SWPM from China; (2) requiring treatment and certification abroad of SWPM from China; (3) treatment either abroad or in the United States; and (4) taking no action (continuing the existing permitting process for SWPM).

The first alternative we considered to this rule was a total ban on importing SWPM from China. In terms of managing pest risks, a total ban on SWPM from China was the most effective, enforceable, and simple alternative. It was also consistent with APHIS' actions in the past, where we implemented import bans on a product from a country when the association of plant pests with the product was well established and it was not practical to enforce treatment for the pests. In this case, the association of dangerous exotic plant pests with SWPM from China is well established, and, while treatments for those plant pests are available, constant enforcement may not be practical. A huge volume of cargo with SWPM arrives daily in the United States from China. Checking at ports to confirm that arriving SWPM has been treated, and has certificates issued by the national government of China confirming treatment, will require substantial additional APHIS resources at ports. Additional resources will also be needed to deal with shipments that arrive without certification or with untreated SWPM.

Although a ban on SWPM from China would be the most effective and practical means of controlling the pest risk, it would have an adverse impact on trade with China and on those sectors of the U.S. economy that rely on Chinese imports. These effects are discussed below under ''Executive Order 12866 and Regulatory Flexibility Act.'' A ban would affect a large fraction of the more than one million shipments imported into the United States from China each year, valued at over $72 billion in 1997. The primary effects of a ban would be to delay delivery of shipments while exporters arrange to use alternative materials other than SWPM, and to increase the cost of each shipment for which more expensive packing materials are substituted for SWPM.

The second alternative APHIS considered was to allow SWPM from China to enter the United States if treated prior to departure from China and accompanied by certification of treatment. APHIS believes that effective implementation of this option will minimize trade disruption and other adverse impacts while managing pest risks. The costs associated with this alternative are also discussed below under ''Executive Order 12866 and Regulatory Flexibility Act,'' and include primarily costs of treating SWPM.

The third alternative APHIS considered was to inspect SWPM from China at the port of arrival in the United States, and to order treatment if necessary after arrival in the United States. Under this alternative, exporters could also have treated their SWPM prior to departure from China if they expected treatment would be necessary. This alternative could have allowed some shipments to be cleared by inspection upon arrival, with no need for treatment. Although this option would provide less of a trade disruption than the previous alternatives, we believe that it would increase pest risks to an unacceptable level. This alternative probably would not induce most exporters to treat SWPM from China prior to departure and would, instead, result in a vastly increased demand for treatment, especially methyl bromide fumigation, at ports of arrival in the United States. Treatment upon arrival would be very labor intensive, would also have adverse consequences on the efficiency of port operations, would have severe budget implications for APHIS, and would not be consistent with our policy for regulating SWPM from all other parts of the world, which is, essentially, that the SWPM must be rendered safe prior to arrival. The option of treating the SWPM in the United States carries with it the risk that pests associated with untreated SWPM arriving from China could escape prior to treatment and become established in the United States. It should also be noted that many articles in commerce have components (e.g., soft rubber) that can be damaged by methyl bromide fumigation, and that it makes more sense to treat SWPM used with these articles separately, before they are packed for export.

For the reasons discussed above, this interim rule does not allow treatment of SWPM from China after arrival in the United States. However, if SWPM arrives untreated or without certification, this rule provides that an inspector will allow the importer to separate the cargo from the SWPM and destroy or reexport the SWPM, if the inspector determines this can be done without risk of spreading plant pests. This alternative to denying entry to the entire shipment will only be an option where there is a secure facility for separation of the cargo, available means to destroy the SWPM (incineration, or chipping and incineration, are the authorized methods), and available APHIS inspectors to supervise the process.

The final alternative we considered was to take no action, rely on the existing import requirements, and allow the United States and China to continue to work on a bilateral basis to develop cooperative solutions to mitigate the risks associated with importing SWPM from China. This alternative could include efforts to encourage importers and exporters in both countries to develop strategies to reduce risk. However, efforts to date in this area resulted in little cooperation from China, and it does not appear likely this alternative would solve the immediate risk facing the United States.

APHIS has decided to implement the requirements of this rule instead, allowing SWPM from China to enter the United States if treated prior to departure from China and accompanied by certification of treatment. We believe it is possible to reassign the necessary resources to U.S. ports to implement the requirements imposed by this rule. However, we will closely monitor the effectiveness of these procedures in reducing pest introductions, and, if they do not succeed, we will take further action to ensure that the importation of SWPM does not endanger our forest and agricultural resources.

**Effects of This Rule on Federal Agency Operations and Resource Requirements**

Both APHIS and the United States Customs Service will need to make substantial adjustments to their activities to implement this interim rule. These two agencies already work in cooperation at U.S. ports to clear shipments from China for entry. This rule will require new documentation that will have to be examined as appropriate at the time of entry, and will require selective additional inspections by both APHIS and U.S. Customs Service inspectors to verify that shipments comply with the regulations. Additionally, the exporter statement required for shipments from China not containing SWPM is a type of document that has not been programmed to be included in the Automated Broker Interface (ABI) of Customs Automated Commercial System (ACS).

APHIS expects to reassign inspectors from other areas to the ports that receive the bulk of imports from China to perform the additional inspections and other procedures required by this rule (e.g., checking whether cargo accompanied by an exporter statement truly contains no SWPM, supervising destruction or reexport of SWPM when it is required). It will probably be necessary to hire additional staff as well. The cost of reassigning this staff, hiring any additional staff, training them in the new procedures, and related costs is roughly estimated at $2.7 million per year for APHIS. The U.S. Customs Service will also incur additional costs for its role in implementing these regulations, although no estimate of that cost is currently available.

**New User Fee for Services Provided to Facilitate Entry of SWPM**

We will charge a new hourly user fee for providing APHIS services—primarily additional inspection services, and supervising separation of SWPM from cargo—to facilitate the entry of SWPM when the services exceed the normal inspection and paperwork activities for which user fees are currently established in 7 CFR 354.3. The new user fee will cover situations where APHIS must inspect a shipment that lacks the exporter statement or certificate required by new § 319.40–5(g) or (h), or where these documents are incomplete. The inspections will be necessary to determine whether the cargo contains SWPM, and if so, whether the cargo must be reexported or whether it can be safely separated from its SWPM. We expect the new user fee will primarily apply to situations under new § 319.40–5(g)(3). Under new § 319.40–5(g)(3), when an inspector determines that a shipment imported from China contains SWPM that was not heat treated, fumigated, or treated with preservatives, or that was not accompanied by a certificate documenting such treatment, the inspector may, in lieu of refusing entry, allow the importer to separate the cargo and destroy or reexport the SWPM under supervision of an APHIS inspector.

These services exceed those normally provided for arriving international shipments. Normal services usually include reviewing paperwork to determine whether cargo contains prohibited or restricted articles, checking for any required permits or certificates, and occasional inspection to verify the status of cargo documented in the paperwork. These normal services are paid for by user fees established in

7 CFR 354.3, currently $454.50 for each arriving vessel of 100 tons or more and $59.75 for each arriving commercial aircraft. We will charge hourly user fees for cases where inspectors must perform additional duties related to clearing shipments from China, as it would be difficult to establish a flat fee. This is because costs could vary widely from one customer to another, based on the nature and size of the shipment; consequently, a flat fee would be very inequitable to some importers and exporters.

We are amending 7 CFR part 354—''Overtime Services Relating To Imports and Exports; and User Fees,'' to establish this new fee. The hourly user fee rate will be $56.00, or $14 per quarter hour, with a $14 minimum. If the services must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate as listed below applies, as well as the 2-hour minimum charge and a commuted traveltime period required by § 354.1(a)(2). If the services requested are performed on a Sunday, the hourly user fee rate will be $74.00, or $18.50 per quarter hour, with a $18.50 minimum. If the services requested are performed on a day other than Sunday outside the normal tour of duty of the employee providing the service, the hourly user fee rate will be $65.00, or $16.25 per quarter hour, with a $16.25 minimum.

This hourly rate user fee has been calculated to cover the full direct labor cost of providing that service. Direct labor costs are the costs of employee time spent specifically to provide the service. For fees charged in accordance with this rule, costs have been calculated based on the direct labor costs of APHIS inspectors at the ports of arrival (estimated at the salary cost for a GS–9 step 5 inspector plus a benefits cost of 31 percent of salary), direct materials costs, administrative support, Agency overhead, and Departmental charges.

**Immediate Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent further introduction and spread of exotic pests associated with SWPM from China.

Although this rule does not take effect until 90 days after the date of publication, it is necessary to set the effective date now, rather than accept comments on a proposal and give notice of a final action and effective date later. Importers, exporters, national governments and others will need the full 90 days to prepare for the significant changes in operations that will become necessary on the effective date of this rule. Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective 90 days after the date of publication in the **Federal Register**.

If APHIS decides, based on comments received on this interim rule, to publish a final rule that significantly changes the regulatory requirements in this interim rule in such a way that persons affected by the final rule need time to change their business procedures, we will set an appropriate effective date for the final rule to allow time for implementation of such changes.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Public Hearings**

APHIS will host three public hearings to provide interested persons a full opportunity to present their views regarding this interim rule. One public hearing will be held on October 16, 1998, at the Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC. The other hearings are tentatively scheduled to be held in Seattle, WA, and Los Angeles, CA, during the public comment period. Specific dates and locations for these hearings will be announced in a separate **Federal Register** notice.

A representative of APHIS will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearings will be asked to sign in, listing their names and organizations.

The public hearings will begin at 9:00 a.m. local time and are scheduled to end at 5:00 p.m. local time. However, the hearings may be terminated at any time after they begin if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at the hearing warrants, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the interim rule may be part of the commenters' oral presentations. Neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings. However, they will be able to answer questions to clarify or explain provisions of the interim rule.

**Executive Order 12866 and Regulatory Flexibility Act**

This interim rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This action requires treatment and certification for all SWPM imported from China. The emergency situation under which we are issuing this rule makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable.

This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis.

Our preliminary cost-benefit analysis is presented below.

*Section I—Purpose and Need for Regulation*

The free trade of goods in international commerce potentially brings with it negative externalities due to the unintended introduction of exotic plant pests and pathogens. Such actions result in costs to various sectors of society (for example, alterations to forest ecosystem diversity and productivity). The private cost of importing commodities does not reflect full social costs since importers responsible for pest introductions are not charged for their contribution to the damages caused by exotic pests on domestic forest resources. The market left to itself would engage in undesirable commercial practices (in this case, the use of unprocessed SWPM) that could lead to detrimental effects on agricultural and natural resources of the United States. Because costs to the U.S. economy as a whole could be

substantial, Federal intervention is required. The increasing number of interceptions requires that emergency measures be used to prevent further dissemination of pests throughout the United States.

This analysis presents preliminary estimates of the benefits and costs of implementing the interim rule to require the treatment and certification of SWPM from China before it is allowed into the United States. In assessing the regulatory alternatives available to the agency, three other options were also considered: (1) Prohibiting the entry of SWPM from China; (2) requiring treatment and certification abroad of SWPM from China; (3) treatment either abroad or in the United States; (4) taking no action (continuing the existing permitting process for SWPM).

To provide a context of the pest risk situation, a discussion of the forest and agricultural resources at risk in the United States is outlined in section II. A background discussion of U.S. trade with China, including magnitude and composition of trade, is presented in section III. The potential impacts of the regulatory options are presented in section IV. Given the emergency nature of the rule, quantifiable estimates of benefits and costs are presented to the extent possible.

*Section II—Forest and Agricultural Resources at Risk*

While there are many quarantine pests associated with SWPM, the initial pest risk assessment (PRA) conducted in support of this interim rule addresses a subset of frequently intercepted insect borers, in the beetle family Cerambycidae, that have escaped detection at ports of entry and been introduced into the United States. These intercepted quarantine pests are of the genera *Anoplophora, Ceresium, Hesperophanes,* and *Monochamus.*

Species of *Anoplophora, Ceresium* and *Hesperophanes* are known to infest hardwoods (broad-leaved and deciduous trees). Host trees listed in the scientific literature and observed in outbreaks in the United States include: maple (*Acer*), horse chestnut (*Aesculus*), apple (*Malus*), poplar (*Populus*), plum (*Prunus*), pear (*Pyrus*), locust (*Robinia*), elm (*Ulmus*), chinaberry (*melia*), mulberry (*Morus*), willow (*Salix*), and citrus (*Citrus*). *Monochamus* sp. primarily attacks softwood or coniferous trees such as evergreen. While it is difficult to predict with accuracy the actual damage if these species of wood-boring insects were to become established in the U.S., these pests have the potential of causing extensive losses to domestic forest and agricultural resources. The following types of economic effects could be expected if these wood-boring pests were to become widespread in the United States:

Effects on the Timber Industry

A significant share of the value of forest resources is derived from their contribution to the timber and wood manufacturing industries. In 1986, timber was the most important agricultural crop in the United States in terms of dollar value of production, surpassing corn, soybean and hay in value of production. The estimated value of timber harvest in 1986 was $7.7 billion (in 1996 dollars), with 84 percent derived from softwood timber and the remaining 16 percent from hardwood species.[1]

Value estimates in this section are adjusted to 1996 dollars utilizing the Gross Domestic Product implicit price deflator. When the value added from harvesting the timber and moving it to local points of delivery is included, the value of the 1986 timber output in the United States was approximately $17.1 billion. Total U.S. shipments of wood manufactured products were valued at $252 billion, with $113 billion being value added. Industry shipments in the Northeast region alone, where current outbreaks are located, were valued at $46 billion.[2]

Effects on the Maple Syrup Industry

Sugar maple trees are a preferred host for at least one of the pests of concern, the Asian longhorned beetle. The maple syrup industry relies on healthy maple trees, especially sugar maple, for its production. Maple syrup is produced in 10 states, with Vermont, New York, Wisconsin, and Maine producing 72 percent of the total output. Over 1.5 million gallons of maple syrup were produced in 1991, with a total value of $53 million (in 1996 dollars).[3]

Effects on the Commercial Fruit Industry

The commercial fruit industry is also at risk of pest infestation, as pear, apple, plum and citrus trees are susceptible hosts. A rough approximation of the value of replacing these fruit trees can be obtained from utilizing estimates on the cost of establishing an orchard, which includes expenses associated with planting and cultural practices and irrigation. It is estimated that the cost of replacing host fruit trees would amount to $5.2 billion for pear, apple and plum orchards alone, and $10.4 billion for citrus, for a total cost of $15.6 billion.[4]

In addition, fruits of host trees would also be affected by a widespread pest infestation. The average 1995–1997 value of utilized production of these four types of fruits was estimated at $4.7 billion, with over 50 percent of the value derived from citrus.[5]

Effects on the Nursery Industry

Another economically significant industry that relies on healthy hardwood trees and is therefore potentially at risk of beetle infestation is the nursery industry. In 1993, sales of plants (trees and shrubs) by nurseries and greenhouses in the United States totaled an estimated $3.3 billion, of which $226 million was derived from sales in seven northeastern States. During the year ending September 30, 1993, 103.9 million landscape trees were sold in the United States, including 5.7 million in seven northeastern states. Approximately one-half of all landscape trees sold in the United States are hardwood trees.[6]

Effects on Tourism

The tourism industry is tied heavily to leaf color changes in the autumn months, and the maple tree is noted for producing some of the most vivid colors. Between mid-September and late October, the hardwood forests of New England draw 1 million tourists and generate $1 billion in revenue. It is estimated that up to one fourth of the tourism revenue generated annually in

[1] Source: *''An Analysis of the Timber Situation in the United States: 1989–2040''.* A Technical Document Supporting the 1989 USDA Forest Service RPA Assessment. Forest Service, U.S. Department of Agriculture, December 1990.

[2] Value added is a net measure of an industry's contribution to the economy because the value of materials received from other firms and used in the manufacturing process is subtracted from the value of the products shipped.

[3] Data obtained from Louis C. Wyman Forest Services Laboratory, USDA Forest Service, Durham, New Hampshire.

[4] Based on 1997 bearing acreages of 69,000 acres of pears, 453,220 acres of apples, and 89,600 acres of plums; and cost of establishing an orchard, over four years, of $9,400 per acre for pear and apple, and $3,600 per acre for plum. Bearing acreage of citrus was estimated at 1.15 million acres in 1996–97; average cost of establishing an orchard in Florida, over four years estimated at $10,912 per acre and $5,100 per acre in other states except Florida. Source: Economic Research Service, U.S. Department of Agriculture.

[5] Source: National Agricultural Statistics Service, USDA. Citrus includes the following varieties: orange, grapefruit, lemon, lime, tangerine, K-early, tangelos and tangerine. Citrus data are based on 1996–1997 crop year.

[6] The seven northeastern states are Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, and New Jersey. Nursery and greenhouse data, including information on landscape trees sold, were furnished by the American Association of Nurseryman.

New England is due to the fall foliage displays.[7]

Other Non-market Effects on Urban Trees

Pest species of the *Anoplophora* genera prefer healthy maple and horsechestnut trees, which are favorite street trees in many urban areas. Urban backyard trees directly affect the value of real estate assets. Besides the aesthetic value of urban trees, benefits of the 70 million acres of urban forests are multifold, and include cleaning the air of pollutants, microclimate effects, dimunition of storm water runoff, reduction in street noise, and enhancement of local wildlife populations.[8] Most of these benefits are non-market in nature and are not readily measurable. While several approaches exist in order to obtain measures of these non-market values, time constraints do not permit the estimation of these values.

In sum, the establishment of wood-boring insects of the genera *Anoplophora, Ceresium, Hesperophanes,* and *Monochamus* could cause significant economic damages to forest and agricultural resources in the United States. If left unchecked, these pests have the potential to create losses in excess of $41 billion to forest products, commercial fruit, maple syrup, nursery, and tourist industries.[9]

*Section III—Effects of This Rule on U.S. Trade With China*

In 1997, China's total exports of agricultural and nonagricultural products to the United States were valued at $72.8 billion (including $10.3 billion from Hong Kong), or 8.4 percent share of total U.S. imports. This represented a 18.8 percent increase in value of Chinese imports from 1996. China ranks behind Canada, Japan and Mexico as the fourth largest source of imports for the United States.[10]

U.S. exports to China were valued at $27.9 billion in 1997 (including $15.1 billion to Hong Kong), or 4.1 percent of the total value of exports. China is the fifth largest export market for U.S. commodities.

There are 79 maritime ports of entry where APHIS conducts inspections on imported commodities.[11] The port in Long Beach, CA, is estimated to receive roughly 50 percent of Chinese imports. Other ports receiving a relatively large share of Chinese cargo include Seattle, WA, and Charleston, SC. The three combined ports are estimated to receive about 75 percent of the total imports from China.

The majority of imports from China are non-bulk commodities and are thus likely to arrive with SWPM. In 1997, the U.S. Customs Service estimated that there were 1.141 million shipments from China. Trade data from the U.S. Department of Commerce shows 100 listings of 2-digit codes of commodities imported from China. The composition of the 10 largest imports from China, with values in excess of $1 billion, are:

Electrical machinery
Sports equipment and toys
Footwear
Machinery
Woven apparel
Furniture and bedding
Leather articles
Plastics
Optical and medical instruments
Knit apparel

Electrical machinery, sports equipment, machinery, furniture, and optical and medical instruments are commodities that are likely to be imported with SWPM. APHIS estimates that between 50 to 95 percent of shipments of electrical machinery, sports equipment, and machinery contain some type of SWPM, while 30 percent or less of furniture and optical/medical instruments are packaged with SWPM.[12] In general, clothing articles, textiles, and food and agricultural items are not likely to be shipped with SWPM.

As the composition of trade in recent years shifted from textiles and light manufactured products and more towards machinery, sports equipment and metal products, so too has the import of SWPM increased in shipments of these products. Since 1985, there has been a steady increase in the number of insect interceptions on wood products from China at U.S. ports, likely reflecting the growing volume of Chinese imports (Table 1). At U.S. ports of entry from 1985 through 1996, APHIS intercepted and destroyed insects on various wood products on nearly 5,900 occasions. Most of these interceptions were associated with crating (49 percent), dunnage (36 percent), and pallets (6 percent).[13]

TABLE 1.—GROWTH OF U.S. IMPORTS AND INSECT INTERCEPTIONS ON WOOD PRODUCTS FROM CHINA

| | Percent of total U.S. imports from China | Percent of total insect interceptions |
|---|---|---|
| 1985 | 1.1 | 1.2 |
| 1986 | 1.3 | 1.2 |
| 1987 | 1.6 | 0.7 |
| 1988 | 1.9 | 1.5 |
| 1989 | 2.5 | 0.6 |
| 1990 | 3.1 | 1.2 |
| 1991 | 3.9 | 0.6 |
| 1992 | 4.8 | 4.4 |
| 1993 | 5.4 | 7.3 |
| 1994 | 5.8 | 8.3 |
| 1995 | 6.1 | 11.2 |
| 1996 | 6.4 | 21.2 |

Source: Haack, R.A. et al. "*New York's Battle with the Asian Long-horned Beetle.*" Journal of Forestry, Vol. 95, No. 12, December 1997.

*Section IV—Analysis of Impacts of Regulatory Options*

1. No Action

This alternative would mean that APHIS would not change its existing regulations.[14]

The benefit to this option is that the impact on trade from China, valued at $72.8 billion in imports and $27.9 billion in exports in 1997, would be unaffected. The welfare of U.S. consumers of Chinese products and U.S. exporters to China would be unchanged.

This option would require increased inspection staff at ports of entry and inland destinations solely to target inspections of high risk cargo from China. Based on the volume of shipments, it is estimated that an additional $9.5 million per year would be needed for APHIS staff to perform inspection of Chinese cargo.[15]

[7] Revenue and tourist count data obtained from New York Times article, "*The Rise of Fall,*" (Sept. 19, 1993) and from Boston Globe article, "*A Beetle Bores in Brooklyn*," (Sept. 21, 1996).

[8] Source: Nowak, D.J. and John Dwyer. "Understanding the Benefits and Costs of Urban Forest Ecosystems", in Urban and Community Forestry in the Northeast. Plenum Publishing Co., New York. In press, 28 pp.

[9] This estimate includes the $17.1 billion figure for the value of timber harvests. This estimate does not include the potentially significant non-market values of urban trees, or value-added losses that may occur if manufacturers of finished wood products are unable to obtain substitute supplies for domestic hardwoods unavailable due to pest damage.

[10] Trade data are obtained from the Bureau of the Census, U.S. Department of Commerce.

[11] Data obtained from PPQ, APHIS. Some ports of entry are combined sea and air ports.

[12] Information obtained from survey of APHIS inspectors at three ports: Long Beach, California; Seattle, Washington, and Charleston, South Carolina.

[13] Source: Haack, R.A., et al. "*New York's Battle with the Asian Long-horned Beetle*", Journal of Forestry, Vol. 95, No. 12, December 1997.

[14] Under this option, APHIS would not revise its existing regulations, but presumably the Agency would initiate bilateral negotiations with China in order to minimize pest risk.

[15] This cost is composed of salary and benefits of 140 APHIS inspectors (estimated at a salary cost for GS9 step 5 plus a benefits cost of 31% of salary); cost for travel, vehicles, and other miscellaneous expenses (furniture, uniforms, cell phones, etc.) Data obtained from Financial Management and Analysis Staff, PPQ, APHIS.

Increasing the inspection level alone, however, has a limited effect on reducing the pest risk, since wood-boring insects are difficult to detect by visual inspection. Also, wooden crates are often made of unprocessed, poor quality wood, often with bark left attached inside crate walls, which would further impede visual inspection. It is highly likely, therefore, that outbreaks would still occur even with increased inspection. Individual outbreaks are costly; current eradication efforts of Asian longhorned beetle outbreaks in New York and Chicago are estimated to cost the State and federal governments at least $5 million by the end of FY 1998. Moreover, if these targeted pests were to become established, losses to the forest and agricultural industries could amount to $41 billion. Given the pervasive evidence on pest risk directly associated with imports from China and the potential significant economic losses if the pest were to become established, this option is deemed unacceptable.

2. Treatment and Certification Abroad (Interim Rule)

This alternative involves the implementation of phytosanitary measures beyond the existing permit requirements for SWPM from China. Through an interim rule, with a 90-day phase-in period, APHIS will require that all SWPM associated with cargo from China be accompanied by official certification from the Chinese Government stating that the SWPM was heat treated, fumigated, or treated with preservatives prior to departure from China. Uncertified SWPM associated with Chinese cargo will be prohibited entry and reexported or, under certain circumstances, destroyed in the United States. Certified SWPM found infested will be prohibited entry.

One of the benefits of this option is that the risk of pest introduction will be greatly reduced. The loss of forest and agricultural resources that could be avoided by adopting this alternative is estimated at $41 billion. Additionally, the increase in the number of inspectors required under this option would be less than 30 percent of that required under option 1. This option will ultimately encourage the use of treated SWPM or alternatives to SWPM in the long run.

An approximation of the maximum potential cost of this option is the value of Chinese imports that is potentially affected by the interim rule. The actual cost of the interim rule will be the cost of treating SWPM or switching to other substitutes. This cost cannot be estimated at this time without data on the costs of treatment in China, the costs of alternative packing materials in China, and the availability of alternative markets (in countries that do not require treatment of SWPM) for goods China currently ships to the United States. It is estimated that, in 1997, approximately 24 to 31 percent of imports from China, with corresponding values of $17 billion to $23 billion, arrived with some type of SWPM.[16] However, roughly 30 percent of Chinese imports that arrive with SWPM are voluntarily fumigated before arrival. Thus, the value of imports from China potentially affected by this interim rule is estimated to range between $12 billion and $16 billion, or 17 to 22 percent of the total value of imports from China. These estimates, however, represent a maximum cost that would occur only if all these imports were lost to U.S. markets, a situation that is realistically unlikely to occur. As mentioned above, we do not have data to estimate the actual lower cost associated with treating and certifying the SWPM, the cost of switching to substitutes for SWPM, and how those costs would be passed on to U.S. consumers.

The cost to APHIS of implementing this option (verification that shipments comply with the regulations) is estimated at $2.7 million annually.[17] However, importers will be charged user fees in order to cover most of the additional costs of inspecting and supervising activities under this rule. These new user fees are expected to equal about 15 percent of the fees currently collected for vessel (ship) clearance, and would increase total agricultural quarantine inspection fee collections by 2.3 percent.[18] It is anticipated that the U.S. Customs Service may incur additional costs as well in processing certificates and exporter statements.

3. Allow Treatment in the United States.

This alternative would favor treatment of SWPM from China prior to departure from China, but if untreated SWPM arrived at a U.S. port, the SWPM would be allowed treatment in the United States, reexported, or destroyed. This alternative would provide a benefit to Chinese importers in the flexibility afforded them.

It is anticipated, however, that this option would not induce most exporters to treat SWPM prior to departure from China, and would instead result in a vastly increased demand for treatment, especially methyl bromide fumigation, at ports of arrival. There are not currently enough fumigation facilities at U.S. ports to provide the treatments that would be required under this alternative. The effect on trade would be the same as in Option 2 (require certification without allowing treatment in the United States), in that the same volume of trade would still be disrupted (up to about $16 billion), but with added costs to APHIS for supervising fumigation at ports of entry. It is estimated that the cost of additional APHIS inspectors would be $6.8 million annually in order to implement this option.[19] As in option 2, most of the additional costs of inspection would likely be borne by importers in the form of user fees.

Additionally, the potential for pest dissemination in the United States is higher than under option 2 as importers would routinely be allowed to separate cargo before destroying infested SWPM. This alternative is not consistent with our policy for regulating SWPM from all other parts of the world, which is essentially that the SWPM must be rendered safe prior to arrival.

4. Prohibit SWPM from China

The most restrictive alternative would be for APHIS to prohibit entry into the United States of all SWPM from China. No options for treatment or certification would be available. SWPM arriving at U.S. ports would be refused entry, or would be seized and destroyed.

Under this option, pest introductions from SWPM from China would theoretically be eliminated. The benefits to this option would be the avoidance of potential damages to forest and agricultural resources estimated at $41 billion. The need for treatments would be eliminated, and the need for inspections would be greatly reduced.

The cost of this option would be a disruption of trade with China, with an estimated $23 billion worth of imports that are now shipped with SWPM potentially affected. It is unclear whether any retaliatory actions would be taken against the $27.9 billion U.S. export market to China.

While this option would be the most effective means of controlling the pest

[16] These estimates are based on surveys of APHIS inspectors at three main ports of entry of Chinese imports: Long Beach, CA; Seattle, WA; and Charleston, SC. Roughly 75 percent of imports from China are shipped through these ports.

[17] This cost is composed of salary, benefits and miscellaneous expenses of 40 APHIS inspectors.

[18] In 1997, total AQI user fee collections for the clearance of air passengers, aircrafts, trucks, vessels, and rail cars amounted to $116.6 million, of which $18.3 million was for the inspection of vessels. Data obtained from User Fee Branch, Management and Budget Division, APHIS.

[19] This cost is composed of salary, benefits and miscellaneous expenses of 100 APHIS inspectors.

risk, APHIS believes that the requirements in this interim rule, Option 2, would strike the appropriate balance under current conditions between the need to manage the immediate pest risk with the need to minimize trade disruptions. The agency continues to evaluate the problem of SWPM imports in general and is seeking information to develop longer-term solutions to the problem.

**Summary and Conclusions**

Pests of the genera *Anoplophora, Ceresium, Hesperophanes,* and *Monochamus,* including the Asian longhorned beetle, are destructive wood-boring insects that can seriously damage and eventually kill healthy trees. The Asian longhorned beetle was first discovered in the United States in 1996 and subsequent discoveries have been made in numerous inland distribution warehouses. There is evidence that SWPM from China is the source of the pest infestations. If left unchecked, these pests have the potential to cause economic losses of $41 billion, affecting the forest products, commercial fruit, maple syrup, nursery, and tourist industries in the United States.

The interim rule would require that SWPM from China be treated or fumigated prior to departure from China. Other options to minimize pest risk were considered, but the interim rule is consistent with APHIS' policy on the need to treat materials prior to entry and render them safe on arrival. We believe that, under current conditions, this interim rule strikes an appropriate balance between the need to manage the immediate pest risk and the need to minimize trade disruptions.

Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 5 U.S.C. Secs. 801–808).

This rule has been designated by the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Act).

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act and Environmental Effects Abroad of Major Federal Actions**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the fumigation, heat treatment, and treatment with preservatives of SWPM imported from China will present a negligible risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b),(4) APHIS' NEPA Implementing Procedures (7 CFR part 372), and (5) Executive Order 12114 of January 4, 1979, ''Environmental Effects Abroad of Major Federal Actions'' (44 FR 1957–1962).

Executive Order 12114 ''* * * represents the United States Government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the NEPA with respect to the environment outside the United States, its territories, and possessions'' (section 1–1). This environmental assessment has been designed to satisfy the provisions of the Executive Order and NEPA and its implementing regulations, to the extent applicable.

In the environmental assessment prepared to aid development of this rule, APHIS considered carefully four alternatives in detail: (1) Taking no action (continuing the existing permitting process for SWPM); (2) requiring treatment and certification abroad (the preferred action); (3) treatment abroad or in the United States; and (4) prohibiting entry of SWPM. The potential environmental effects of each alternative are considered below.

The no action alternative does not provide the necessary degree of protection from deep wood boring pest species in Chinese imports. The frequency of interception of infested commodities with SWPM from China makes it likely that continued enforcement of the current regulations would not exclude wood borers and other plant pests.

Ultimately, it would be expected that those plant pests present in the SWPM from China would be introduced into the United States. Their movement from the site of introduction would be expected to result in increasingly greater damage to forest ecosystem commensurate with the spread. The response to this increased damage would be expected to include greater uncoordinated applications of pesticides to control pest damage and more destruction of forest, shade, and ornamental trees. The potential environmental consequences of this alternative are anticipated to be greater than the other alternatives. This approach would enhance the likelihood of pest introduction and the potential for damage to forest ecosystems from pest introductions.

Treatment and certification abroad (the preferred alternative) would involve the implementation of additional phytosanitary measures not included in the existing permit requirements for SWPM from China. Most treatments would be expected to occur in China, although exporters in China might purchase some SWPM treated elsewhere. Alternative packing materials, such as plastic, metal, and loose wood packing materials, could be used in lieu of treatment to qualify the shipment for certification. The potential environmental consequences of this alternative relate primarily to treatment chemicals and are anticipated to be less than the no action alternative, but greater than the prohibition alternative.

Heat treatments must be performed only at a facility in China approved by APHIS or an inspector authorized by the Administrator and the national government of the People's Republic of China. The operation of the facility must comply with the standards set by APHIS to ensure proper treatment and elimination of pest risk. Approved heat treatment and proper handling of the regulated articles eliminates pest risk and has minimal environmental consequences.

The environmental effects of fumigation of SWPM under the preferred alternative are as follows. Most fumigations of wood products have historically involved treatments with methyl bromide due to convenience, cost, availability, ease of handling, timely completion of treatment, and good efficacy. In addition, formulations of sulfuryl fluoride and phosphene have been used, but their applications have been more

limited. Sulfuryl fluoride has been difficult to handle effectively and safely. Phosphene works well for small enclosed areas, but is less efficient for larger treatments. The required length of treatment for good penetration and efficacy of these compounds is generally greater than for methyl bromide.

Approved fumigation and proper handling of the regulated articles eliminates pest risk and poses no direct risks to personnel involved in the treatment or nontarget species. There are, however, potential effects on the ozone layer from using methyl bromide, and these are discussed in detail in the environmental consequences section of the environmental assessment.

To evaluate the potential for environmental impacts from pest introductions under the preferred (''treatment abroad'') alternative, this assessment considers data from recent voluntary fumigation treatments by some shippers in China. APHIS port inspectors reviewed their records of shipments from China that had been fumigated prior to arrival (which comprised some 30 percent of Chinese shipments to that port). Inspectors found live, quarantine pests in 1 percent of those shipments that were reported to have been fumigated. Although not all shipments were inspected and inspections do not always reveal infestations, extrapolation of these rates of compliance for shipments to all regulated loads would be expected to result in an overall effective treatment rate of 96–97 percent. It is anticipated that some forest pests present in the SWPM from China could still be introduced into the United States, but the frequency of introduction and the number of pests would be expected to be much less than under the current regulations (no action alternative).

Preservative treatments authorized by the United States Environmental Protection Agency (EPA) are also allowed under the preferred alternative. The major chemicals used for this purpose are creosote, chlorpyrifos, and oxine-copper applied to the surface of the wood. Proper adherence to label instructions is required to prevent adverse health effects to the applicators and those individuals involved in the shipping and handling processes. Compliance with the label ensures that environmental consequences are minimal to human health and nontarget species.

This alternative could result in a substantial increase in the need for treatments, including fumigation with chemicals such as methyl bromide and phosphene, at ports and other locations in China. It is difficult to quantify the increase in treatments or in pesticides that may be used because the interim rule does provide for the use of nonchemical alternatives. Potential increase in the use of methyl bromide is of concern because it is a chemical that is associated with ozone depletion and resulting excessive ultraviolet radiation.

Methyl bromide is one of several man-made substances that react chemically with ozone in the atmosphere to deplete the stratospheric ozone layer that protects the earth's surface from excessive ultraviolet radiation. Methyl bromide is considered a Class I ozone depleting substance under the Clean Air Act and the Montreal Protocol. Thus, the use of methyl bromide in fumigations required by this interim rule could have a substantial effect on stratospheric ozone depletion.

APHIS estimates that, if China were to comply with the interim rule by fumigating SWPM shipments with methyl bromide, China could use between 1,040 to 12,565 metric tons of methyl bromide annually. The pest risk assessment and environmental assessment presuppose that China could comply with the treatment requirements of the interim rule through an increase in its use of methyl bromide. However, it is likely that China would employ a variety of approved strategies to comply with the interim rule, including use of nonregulated packing materials, heat treatments, and other fumigants such as phosphene.

APHIS is concerned that any increase in methyl bromide use as a result of this interim rule does not cause long-lasting damage to the ozone layer. APHIS also emphasizes that this is an interim measure that will remain in effect for only as long as it takes to develop a more effective solution to the problem—a pest problem that could, if not addressed, result in substantial environmental damage to the forests and ecosystems of the United States. As discussed previously in this interim rule, APHIS will be reviewing regulations pertaining to SWPM from all foreign countries with the intent of developing effective and long-lasting pest control measures that are environmentally acceptable.

The potential environmental consequences of the next alternative (allowing treatment to occur in the United States, or abroad) are anticipated to be comparable to the previously described ''treatment abroad'' alternative in terms of direct effects of treatment chemicals. However, the overall environmental effects of the ''treatment in the United States'' alternative are expected to be greater due to the elevated risk of introduction of pest species into the United States. The treatments for this alternative would be similar to those for the preferred action, but the location of heat treatment or fumigation could be at ports in the United States, and treatment by preservatives in the United States would not be an option. Shippers could also elect to re-export their cargo or have it destroyed at the United States port rather than undergo treatment, but it is expected that most shippers would prefer the treatment costs over the costs of re-export or destruction of cargo. The effects of each treatment would be expected to be similar to those for the preferred action and pose comparable risks.

Alternative packing techniques and use of material other than SWPM are an option under all alternatives. Structural substitutes for SWPM, such as plastic, metal, and loose wood packing materials, could be used. Tight placement of shipments in a manner that eliminates the need for packing materials could have some applications. This option enables the shipper to transport commodities to the United States without the treatments needed for SWPM. The cost, applicability to particular cargoes, and availability of these other packing materials is expected to determine the feasibility for different shipments. Use of these packing materials eliminates pest risk and has minimal environmental consequences. The need of shippers to manufacture or obtain substitute packing materials could result in some environmental effects, dependent upon the potential effects of the manufacturing process.

The final and most stringent alternative would be for APHIS to prohibit entry into the United States of all SWPM from China. There would be no options for treatment and certification. SWPM arriving at U.S. ports would be reexported, or would be seized and destroyed. This alternative makes introductions of pests in SWPM much less likely, but inaccurate documentation and limited capacity for monitoring of compliance with these regulations are still possible. This would be expected to eliminate most of the need for treatments and decrease the need for inspections. The potential environmental consequences of this alternative are anticipated to be less than the other alternatives. Inspectors would have to check some containers to ensure shipper compliance, but this could be done by a brief look in the container to verify that no SWPM is present. Such inspections are less burdensome than thorough pest inspections when SWPM is present. The

direct environmental consequences of prohibition are minimal, but the methods of destruction of seized cargo with SWPM could include incineration and other processes that affect environmental quality.

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection and recordkeeping requirements included in this interim rule have been submitted for expedited approval to the Office of Management and Budget (OMB). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. When OMB completes its review of the information collection requirements contained in this rule, we will publish a notice in the **Federal Register** of OMB's decision. If OMB approves the information collection, the notice will include the OMB control number.

Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–087–1. Please send a copy of your comments to: (1) Docket No. 98–087–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this interim rule.

The paperwork associated with this interim rule will include the completion of foreign government certificates and exporter statements. There will also be requests for inspections. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.087 hours per response.

*Estimated number of respondents:* 29,000.

*Estimated number of responses per respondent:* 29.31.

*Estimated total annual burden on respondents:* 73,950 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, Room 404-W, 14th Street and Independence Ave., SW, Washington, DC 20250.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments, and the private sector. Under section 202 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**List of Subjects**

*7 CFR Part 319*

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

*7 CFR Part 354*

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR parts 319 and 354 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.40–1, a new definition is added in alphabetical order to read as follows:

**§ 319.40–1 Definitions**

* * * * *

*Exporter statement.* A written declaration by the exporter, accompanying a shipment at the time of importation, declaring the nature of the shipment and that the shipment contains no solid wood packing material.

* * * * *

**§ 319.40–3 [Amended]**

3. In § 319.40–3, paragraphs (b)(1), (b)(2), and (b)(3), the first sentence of the introductory text in each paragraph is amended by adding the phrase'', except that solid wood packing material from China must be imported in accordance with § 319.40–5(g)'' immediately before the period at the end of the sentence.

4. In § 319.40–5, new paragraphs (g) and (h) are added to read as follows:

**§ 319.40–5 Importation and entry requirements for specified articles.**

* * * * *

(g) *Solid wood packing material from China.* Solid wood packing material

from China may be imported only in accordance with this paragraph.

(1) Prior to departure from China, the solid wood packing material must be heat treated, fumigated, or treated with preservatives, using a treatment schedule contained in § 319.40–7 or in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. During the entire interval between treatment and export the solid wood packing material must be stored, handled, or safeguarded in a manner which excludes any infestation of the solid wood packing material by plant pests.

(2) At the time of arrival at the port of first arrival, the solid wood packing material must be accompanied by a certificate signed by an official of a Chinese government agency authorized by the national government of China stating that the solid wood packing material, prior to departure from China, has been heat treated, fumigated, or treated with preservatives using a treatment schedule contained in § 319.40–7 or in the Plant Protection and Quarantine Treatment Manual. Exporters may, at their option in order to expedite release of their shipment at the port of first arrival, arrange to have each article of solid wood packing material that has been treated marked at the treatment facility with a stamp or weatherproof label that reads CHINA TREATED. This type of marking, however, is not a substitute for the required certificate.

(3) If an inspector determines that a shipment imported from China contains plant pests, or contains solid wood packing material that was not heat treated, fumigated, or treated with preservatives, or that was not accompanied by a certificate documenting heat treatment, fumigation, or preservative treatment, the inspector may refuse entry into the United States of the entire shipment (cargo and solid wood packing material). If the inspector determines that the cargo may be separated from the solid wood packing material and that the solid wood packing material may be destroyed or reexported without risk of spreading plant pests, the inspector may allow the importer to separate the cargo from the solid wood packing material at a location and within a time period specified by the inspector and destroy or reexport the solid wood packing material under supervision of an inspector. The means used to destroy solid wood packing material under this section must be incineration, or chipping followed by incineration. The importer shall be responsible for all costs associated with inspection, separation, and destruction or reexportation of solid wood packing material, including costs of the services of an inspector to monitor such activities, in accordance with § 354.3(j) of this chapter.

(h) *Cargo from China that does not contain solid wood packing material.* All commercial shipments imported from China that do not contain any solid wood packing material must include an exporter statement on or attached to the commercial invoice and as an attachment to the bill of lading stating that the shipment contains no solid wood packing material. Any shipment that is not accompanied by such an exporter statement shall be subject to inspection for solid wood packing material, and if such inspection is ordered by an inspector, the shipment will not be granted entry into the United States prior to completion of the inspection; the importer shall be responsible for all costs associated with inspection, separation, and destruction or reexportation of any solid wood packing material, including costs of the services of an inspector to monitor such activities in accordance with § 354.3(j) of this chapter.

**§ 319.40–10 [Amended]**

5. In § 319.40–10, footnote 5 is revised to read as follows:

[5] Provisions relating to costs for other services of an inspector, including services related to extra inspection and separation of cargo from packing material for shipments that arrive without a complete certificate or exporter statement as required, are contained in part 354 of this chapter.

## PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

6. The authority citation for part 354 continues to read as follows:

**Authority:** 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

7. In § 354.3, a new paragraph (j) is added to read as follows:

**§ 354.3 User fees for certain international services.**

* * * * *

(j) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for any import or entry services listed below, of $56.00 per hour, or $14.00 per quarter hour, with a minimum fee of $14.00, for each employee required to perform the following services. If the services must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate as listed below applies, as well as the 2-hour minimum charge and a commuted traveltime period required by § 354.1(a)(2). If the services requested are performed on a Sunday, the hourly user fee rate will be $74.00, or $18.50 per quarter hour, with a $18.50 minimum. If the services requested are performed on a day other than Sunday outside the normal tour of duty of the employee providing the service, the hourly user fee rate will be $65.00, or $16.25 per quarter hour, with a $16.25 minimum:

(1) Conducting inspections, on vessels or in storage areas, of solid wood packing material or cargo when a shipment arrives without a certificate or exporter statement required under § 319.40–5(g) or § 319.40–5(h) of this chapter, or with an incomplete certificate or exporter statement; and

(2) Supervising the separation of cargo from solid wood packing material denied entry under this subpart and the destruction or reexportation of the solid wood packing material.

Done in Washington, DC, this 15th day of September 1998.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

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